IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11469 of 2005
With
SPECIAL CIVIL APPLICATION No. 11580 of 2005
With
SPECIAL CIVIL APPLICATION No. 11582 of 2005
To
SPECIAL CIVIL APPLICATION No. 11585 of 2005
With
SPECIAL CIVIL APPLICATION No. 12040 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SP PATEL - Petitioner(s)

Versus

CHIEF ADMINISTRATIVE OFFICER & 1 - Respondent(s)

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Appearance :

MR MP SHAH for Petitioner No(s).: 1.

MS. KRUTI M SHAH for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

MR RC JANI for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date : 21/07/2005

ORAL JUDGMENT

RULE. Mr.R.C.Jani, learned advocate waives service of notice of rule in each of these petitions on behalf of the respondents.

By filing these petitions, the concerned petitioners have challenged the decision of the department which is in form of a communication dated 31st May, 2005, by which the Chief Administrative Officer of the department has informed the Chief Engineer to cancel the pay scale given to the petitioners as according to the said officer, pay scale given to the petitioners is contrary to the Government instructions and Government Resolution and accordingly the regular scale of Rs.4,000-6,000/- given to the petitioners is reduced to Rs.3,050-4,590/-. The said decision reducing the pay scale is challenged by individual petitioners by filing these petitions.

Learned advocate Ms.Shah for the petitioners submitted that the said order is passed without hearing the concerned petitioners and, therefore, it is contrary to the principles of natural justice. It is submitted by Ms.Shah that earlier one of the petitioners namely B.J.Gotecha had filed Special Civil Application No.3209/2001, wherein learned Single Judge of this Court directed the department to hear the concerned petitioner and thereafter to pass appropriate order. It is submitted by her that in spite of that pay scale of the petitioner is reduced without hearing him.

Learned advocate Mr.Jani, who is appearing in response to the notice of this Court, has submitted that

the aforesaid pay scale is wrongly given by the concerned officer to the present petitioners. He submitted that the petitioners were daily wagers and as per the Government circular dated 17-10-1988, it is provided that no new daily rated skilled labourers should be appointed and if any such recruitment is made, the concerned officer shall be responsible in respect of arrears of salary etc. Mr.jani also further submitted that except one petitioner, rest of the petitioners were appointed after 17-10-1988 therefore, there is no question of giving regular pay scale to the petitioners, however, Ms.Shah has objected to this argument. Mr.Jani submitted that the petitioners were not entitled to the aforesaid pay scale and even if by mistake that pay scale is given to them, it will not confer any right in favour of the petitioners.

In my view, it is not necessary to examine the aforesaid aspect of controversy in detail. It is not in dispute that before passing the aforesaid order by which the pay scale of the petitioners is reduced from Rs.4,000-6,000/- to Rs.3050-4590/-, no hearing was given to the petitioners by the concerned officer. Since the order is passed without hearing the petitioners only on that ground the impugned order is quashed and set aside. The department is directed to give appropriate hearing to the petitioners, which may include personal hearing also, so that it may not be said in future that order is passed in violation of principles of natural justice and, after hearing the petitioners appropriate order may be passed in accordance with law and as per the Government circular and policy. The department is directed to take such decision on or before 30th September, 2005 and till such

decision is taken the petitioners shall be entitled to retain the pay scale which they were getting earlier, i.e., the pay scale of Rs.4,000-6,000/-.

Subject to what is stated above, all these petitions are partly allowed. Rule is made absolute to the above extent in each of these petitions with no order as to costs.

Direct service is permitted.

(P.B.MAJMUDAR, J.)

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